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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 NANNETTE PIERCE, an individual,
12 Plaintiff,
13 vs.
14 KAISER FOUNDATION
15 HOSPITALS, a corporation; THE
16 PERMANENTE MEDICAL GROUP;
17 a corporation; and DOES 1 through
20,
21 Defendants.

CASE NO. 14-cv-157-H (BGS)
**ORDER GRANTING
PLAINTIFF'S MOTION TO
REMAND**

[Doc. No. 8.]

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19 On January 23, 2014, Defendant Kaiser Foundation Hospitals ("Kaiser")
20 removed this action from the Superior Court of California, County of San Diego. (Doc.
21 No. 1.) On February 21, 2014, Plaintiff Nannette Pierce ("Plaintiff") filed a motion to
22 remand the action to state court. (Doc. No. 8.) On February 26, 2014, Defendant The
23 Permanente Medical Group ("TPMG") filed a notice of joinder to Kaiser's notice of
24 removal. (Doc. No. 9.) On March 10, 2014, Defendants Kaiser and TPMG filed an
25 opposition to Plaintiff's motion to remand. (Doc. No. 14.) On March 17, 2014, Plaintiff
26 filed her reply. (Doc. No. 15.) On March 19, 2014, the Court, pursuant to its discretion
27 under Local Rule 7.1(d)(1), submitted the motion on the parties papers. (Doc. No. 16.)
28 The Court grants Plaintiff's motion to remand.

Background

Plaintiff had been employed as hospice nurse by Defendants. (Doc. No. 1-2, “Compl.” ¶¶ 6-9.) Subsequently, Defendants terminated Plaintiff’s employment. (Compl. ¶¶ 10-32.) Plaintiff’s complaint alleges that Defendants discriminated against her, in violation of state law, when they terminated her employment. (Compl. ¶¶ 33-66.)

On December 26, 2013, Plaintiff filed her complaint in the Superior Court of California, County of San Diego (“California state court”) against Defendants. (Compl. at 2.) On December 27, 2013, Plaintiff effected service of process on Defendant Kaiser. (Doc. No. 1-3.) On January 12, 2014, Plaintiff effected service of process on Defendant TPMG. (Doc. No. 8-2 at 4-6.)

On January 23, 2014, Defendant Kaiser filed a notice of removal from the California state court, claiming that the Court has federal question jurisdiction under the Labor Management Relations Act of 1947, 29 U.S.C. § 185(a). (Doc. No. 1 at 2.) In its notice of removal, Defendant Kaiser stated that it was “informed and believes that no other defendants have been served with the Summons and Complaint(s) in this action.” (Doc. No. 1 at 4.)

On February 21, 2014, Plaintiff filed a motion to remand the case back to California state court on the grounds that Defendant Kaiser failed to comply with the procedural requirements of the removal statute. (Doc. No. 8.) On February 26, 2014, Defendant TPMG filed a notice of joinder to Defendant Kaiser’s notice of removal. (Doc. No. 9.)

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Discussion

I. Legal Standard for Remand

Only cases that would have had original jurisdiction in a federal district court may be removed from state court. 28 U.S.C. § 1441(a). “When a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action.” 28 U.S.C. § 1446(b)(2)(A).

A defendant must remove a case within thirty days of when it is served, if the initial pleading makes clear that the case is removable. 28 U.S.C. § 1446(b)(2)(B); Harris v. Bankers Life & Cas. Co., 425 F.3d 689, 692 (9th Cir. 2005). The burden of establishing removal jurisdiction is on the proponent of federal jurisdiction. Moore-Thomas v. Alaska Airlines, Inc., 553 F.3d 1241, 1244 (9th Cir. 2009) (citing Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992)).

When fewer than all defendants join the notice of removal, the burden is on the removing defendant to explain the absence of the other served defendants. Prize Frize, Inc. v. Matrix (U.S.) Inc., 167 F.3d 1261, 1266 (9th Cir. 1999), overruled on other grounds by Abrego Abrego v. Dow Chemical Co., 443 F.3d 676, 680 (9th Cir. 2006); see also Lopez v. BNSF Ry. Co., 614 F. Supp. 2d 1084, 1087 (E.D. Cal. 2007). “If the removing party seeks to cure a defect in the removal petition after the thirty day period has elapsed . . . the court has discretion to prohibit such an amendment.” Bicek v. C & S Wholesale Grocers, Inc., Case No. 2:13-CV-00411-MCE, 2013 WL 4009239, at *3 (E.D. Cal. Aug. 5, 2013) (quoting Hemphill v. Transfresh Corp., Case No. C-9-0899-VRW, 1998 WL 320840, at *4 (N.D. Cal. June 11, 1998)).

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1 **II. Plaintiff's Motion to Remand**

2 Plaintiff contends that Defendants failed to comply with the procedural
3 requirements of the removal statute by failing to obtain the consent of co-Defendant
4 TPMG to the removal within the thirty day time period provided by 28 U.S.C. §
5 1446(b).¹ (Doc. No. 8-1 at 3-6.) Defendants admit that TPMG's joinder to the notice
6 of removal was tardy, in that TPMG filed its notice of joinder forty-five days after
7 Plaintiff effected service on it. (Doc. No. 14 at 8.)


8 Defendants urge the Court to permit them to cure the defects in their removal by
9 amendment under 28 U.S.C. § 1653. (Doc. No. 14 at 8-9.) After reviewing the parties'
10 filings, the Court concludes that Defendants' confusion as to how the properly served
11 summons and complaint were handled by Defendants' own employees is not an
12 adequate justification for failure to comply with the procedural requirements of the
13 statute.²

14 **Conclusion**

15 For the foregoing reasons, the Court grants Plaintiff's motion to remand the
16 action back to California state court. Because Defendants belief that the defects in the
17 removal could be cured via amendment was objectively reasonable, the Court denies
18 Plaintiff's request for an award of fees and costs.

19 **IT IS SO ORDERED**

20 Dated: March 19, 2014

21 
22 Marilyn L. Huff, District Judge
23 UNITED STATES DISTRICT COURT

24 ¹Plaintiff also points out that Defendant Kaiser cited to the wrong subsection of
25 28 U.S.C. § 1441 in its notice of removal. (Doc. No. 8-1 at 3.) Defendant Kaiser admits
26 to mistakenly citing the wrong statutory subsection. (Doc. No. 14 at 6.) Defendant
27 Kaiser's citation error is not dispositive of the Court's analysis of the motion to
28 remand.

²Furthermore, the Court is not adequately convinced by Defendants' argument
that Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185(a),
establishes federal question jurisdiction. Cf. Burnside v. Kiewit Pacific Corp., 491 F.3d
1053, 1059-60 (2007).